

REMARKS

Claims 21, 24-29, 31-36 and 38 remain in the application. The claims 21, 24-29 and 31-36 and 38 are finally rejected under Section 103 based on Gloudeman (U.S. 6,028,998) in view of Azarya (U.S. 5,978,578). In response to remarks filed by the Applicant on 9 February 2009, the final office action provides at pages 9, 10 and 11 a response to applicants' arguments. This paper filed under Rule 116 provides a reply to the Examiner's response to applicants' arguments, and it points out other deficiencies in the rejection.

The Applicants respectfully submit that the final rejection is, at best, only a piece meal reconstruction which finds passages that do not fully describe the claimed features and, yet, extracts these from their proper context to reassemble the claimed invention as though it might be obvious. Actually, the rejection is a reconstruction effort that is only made in hindsight recognition of applicants' teachings. Again, applicants request reconsideration and allowance over the prior art for reasons similar to the argument which has resulted in withdrawal of two earlier rejections. As previously noted, the claims do not need to be further amended because they already fully distinguish over the prior art.

As noted in earlier papers presented to the Examiner, the independent claims 21 and 29 are each directed to a system or method for programming an automation system or an automation device. Claim 21 is directed to a storage medium which stores a software system for providing a programming environment to create device-independent functionality among automation devices in an automation system of the type including a plurality of automation devices. Claim 29 provides a similar recitation. However, the rejection cites col. 2, lines 20-28 of Gloudeman for describing a framework which leaves the user free to create an application without having to "worry about device-dependent details." Providing a framework wherein the user does not have to *worry* about details **does not mean that the framework creates a device-independent functionality** among automation devices.

Claim 21 requires

“editors and compiler providing an automation functionality in a standard framework for application among automation devices having different command sets for being programmed.”

In this regard, the passage of Gloudeman relied upon for this claimed subject matter does not disclose or suggest what is claimed. Specifically, col. 2, lines 27-32 discloses a framework which is consistent for building an automation framework – “a scalable architecture that will function on a wide range of processor platforms ...” However, none of the citation discloses or suggests the feature of providing a functionality among automation devices having **different command sets**. This prior art clearly does not disclose such. Now the final office action argues that Gloudeman implicitly discloses the above-quoted feature, further citing col. 4, lines 22-40. While the cited passage employs the word “commands” and discloses changing the commands (“flexibly changed for generating p-code”), this is not the same as disclosing automation devices having **different command sets** for being programmed. That is, the passage only refers to changing the commands and does not refer to using different command sets for different devices.

Thus there is no motivation for combining the references to re-create the invention from the prior art. There is no basis for obviousness.

Second, even if there were a basis for combining the references, the combination which would result would not be the same as that which is claimed.

The Azarya reference has been relied upon because, as stated at page 4 of the office action, the Examiner acknowledges that Gloudeman does not disclose

“a compiler for translating the solutions into an intermediate language in a runtime framework for further translation into different instructions for automation devices in different automation systems.”

However, this deficiency cannot be remedied by Azarya (e.g., the citation at col. 3, lines 16 – 32) because the compiler of Azarya does not “translate solutions into an intermediate language in a runtime framework for further translation into different

instructions for automation devices in different automation systems” as argued in the rejection. A reading of the cited passage (col. 3, lines 16-32 of Azarya; col. 4, lines 56-67) confirms that the reference merely discusses generating a p-code to be executed on a target system, i.e., one system. There is no suggestion of “translation into different instructions for automation devices in different automation systems.” Despite citation of many lines of text from the Azarya reference, the prior art does not disclose what is claimed. In fact, the rejection seems to acknowledge this by asserting that the reference “implicitly discloses” the claimed feature.

The standard for obviousness requires a prima facie case and this cannot be had with handwaving or unsupported allegations that the subject matter is **implicitly disclosed**.

As another example of a deficiency, claim 21 also requires

an automation device-specific adapter for each of the automation devices, each adapter providing a translation of a solution into instructions which can be interpreted by an automation device in a different automation system ...

It is not at all understood how the Examiner believes that the citations to Azarya (col. 4, lines 56-67, col. 5, lines 30-37) can relate to the above recitation. As a minimum the Examiner should provide express support or withdraw the rejection.

In summary it cannot be seen that the subject matter of claim 21 is taught or suggested by any combination of the prior art. Although the wording of independent claim 29 differs from that of claim 21, a reading of claim 29 confirms that substantially the same deficiencies exist in the application of Gloudeman (U.S. 6,028,998) in view of Azarya (U.S. 5,978,578) to reject claim 29.

The prior art combination cannot result in the invention for two reasons: first the above noted deficiencies preclude a rejection; and second, notwithstanding the deficiencies, the combination is only a hindsight reconstruction according to the applicants' teachings. That is, none of the prior art identifies the problems the applicants solve, or any other reason to make the combination which is claimed. The features of the storage medium according to independent claim 29 include a software system for providing a “programming environment to create device-independent functionality among automation devices in an automation system ...” The references are each directed

to different problems, and the piecemeal extraction of features from each amounts to no more than a hindsight reconstruction of the invention.

As noted multiple times during this examination, **MPEP Section 2142** describes the tendency to resort to hindsight based on the applicants' disclosure and that this is often difficult to avoid due to the nature of the examination process. Nonetheless, such **hindsight must be avoided**. This hindsight is especially apparent based on the effort to read applicant's compiler (see claims 21 and 29) on the disclosure of Azarya. Previously Anderson and the Becker reference were each relied upon for the same. It is only with the claimed arrangement (see claim 21) that one solution can be developed for multiple automation devices and then translated into instructions for automation devices in different automation systems.

Even if there was an ability to meet all of the terms of the claims by combining the references as proposed in the new rejection, there would still be no teaching to form a basis for obviousness. There is no precedent to use the components to achieve the claimed functions. No one, without knowledge of the present application, would look to these references to create that which is now claimed.

As one further example, it should be noted that the claimed compiler, providing an intermediate language, in combination with an "automation device-specific adapter for each of the automation devices" not only results in each adapter providing a translation of a solution into instructions, but also reduces the quantity of compilers used for developing an automation solution. Otherwise, each programming language of each editor used would have to be translated with a special compiler for the target platform. The prior art combination used to reject the claims would still require $n \times m$ compilers for m editors and n automation devices. As a feature of the claimed invention, only $n + m$ compilers are required to implement a specific automation solution. This is not at all recognized by the art of record. The final rejection fails to respond to this distinction.

To the extent the Examiner disagrees with the foregoing, the applicant already requested that the Examiner provide a complete response so that applicants can reassess whether the rejection has any merit. The examiner has not responded with support for a prima facie case of obviousness. Although the foregoing argument was expressly

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presented with reference to claim 21, it is applicable to claim 29 and all of the dependent claims.

Conclusion

For the above reasons the prior art does not provide a basis to reject any of the claims. Removal of the rejection is therefore required.

The application is in condition for allowance. The Commissioner is hereby authorized to charge any appropriate fees due in connection with this paper, including the fees specified in 37 C.F.R. §§ 1.16 (c), 1.17(a)(1) and 1.20(d), or credit any overpayments to Deposit Account No. 19-2179.

Respectfully submitted,

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